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Abstract

Postcolonial feudal concepts applied to the northern cattle industry demonstrate how wide-scale Aboriginal labour exploitation entailed both colonists' usurpation of land and an acquiescence of Aboriginal land interests. The critical role of Aboriginal labour to the fledgling cattle industry drew colonists and Indigenes into a relationship that accommodated competing land interests. Anthropologists Ronald and Catherine Berndt reported in 1946: Especially on the larger [cattle station] holdings, something very much like a feudal situation developed: an overlord, with a circle of serfs over whom he had almost absolute power. The Aborigines, whether full-time employees or simply dependents ... were allowed to remain there on sufferance (Berndt 1987: 272).

Postcolonial Feudal Hauntings of Northern Australian Cattle Stations

Thalia Anthony

Introduction

Postcolonial feudal concepts applied to the northern cattle industry demonstrate how wide-scale Aboriginal labour exploitation entailed both colonists' usurpation of land and an acquiescence of Aboriginal land interests. The critical role of Aboriginal labour to the fledgling cattle industry drew colonists and Indigenous into a relationship that accommodated competing land interests. Anthropologists Ronald and Catherine Berndt reported in 1946:

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These feudal relations reverberate with the feudal laws of coexisting land possession that underpinned Australian land conquest. That legal framework provided for a graded system of land rights and dependencies to allow settler possession alongside Crown ownership. Settlers could exercise a direct jurisdiction over land and Aborigines while enforcing the Crown's supremacy because it suited colonial land interests. Coexisting land dependencies emanated from the labour relationship

on cattle stations. The feudal analysis deployed in this article breaks the conventional impasse between 'free' and 'forced' labour by considering the intersection of land and law on northern cattle stations.

Definition of colonial feudal concepts

The use of postcolonial feudal theory to explicate northern Australian colonial dependencies, requires an integrated legal (Craig 1703, Maitland 1908, Ganshof 1966: xvi) *and* socio-economic methodology (Marx 1959, Duby 1980, Kula 1976). These methodologies have traditionally been treated as mutually exclusive. Moralistic perspectives on feudalism as forced bondage of peasant to landlord, produced by the former methodology, fail to account for the property interests of *both* the exploiter and exploited. 'Technical' definitions of legal purists that are reliant on the vocabulary of medieval land contracts and articles, and detached from sociological issues are also insufficient. Legal purists stress the role of the tenement, known as the fief. It was granted by the Crown or liege lord to free vassals in return for services. The process of 'subinfeudation' refers to the various layers of land possession that can be parcelled, and the resulting vassalage owed. Notwithstanding the value of understanding feudal law, legal theory needs to be located in its socio-economic and cultural world.

Postcolonial feudal theory as a comparative device calls on the essential features of 'property, law and society' to be identified in their 'interdependence' (Buck 1995: 166, Bloch 1962: xiv). Feudal property rights and obligations do not cast a 'rational' divide between legal, political and cultural expressions (Lukács 1983: 57). The postcolonial feudal analysis of northern Australia leans on John O Ward's claim that there does not exist a 'complete' feudal society anywhere, so the task is one of identifying 'the perceptual framework' that 'motivates and restricts the inquiry' (Ward 1985: 55). Accordingly, a framework can be found in Susan Reynolds' acclaimed *Fiefs Versus Vassals*: 'the rights to exclude others from one's property and to have access to the property of others' (Reynolds 1994: 481). Feudal relations are a manifestation of the 'many gradations' of property possession and its 'corresponding power' (Reynolds 1994: 476).

The feudal concept of 'differential rights to land' has been recognised by international theorists as relevant to colonial relations because of the centrality of land possession in colonisation. Colonial feudal discourse transcends medieval feudal discourse by identifying its universal features. In particular, colonial theorists point to the relation of vassalage and homage that arises from coexisting claims to feudal land. Between the lord and worker, feudal land claims are a mechanism for surplus appropriation. The loyalty of the worker through ongoing labour services is bestowed in return for access to land. However, the worker's conditional rights to land do not translate into legal title, which is the exclusive domain of feudal lords. Feudal tenure laws ensure that lords could only grant land title to other lords, stemming from the plenipotentiary of the Crown.

This proprietary *and* socio-economic interpretation of feudal relations has been compelling where dominant Indigenous populations in colonial societies are exploited due to their land ties (Laclau 1977: 30). Jurists Matienzo (1570) and Solorzano Pereira (1647) referred to this situation as colonialism's 'new feudalism' (Banaji 1972: 2500–1). This new feudalism has been analysed in India (Byres 1985, Banaji 1972, Alavi 1975, Mukhia 1981); the Philippines (Sison 1986, Berlow 1996); Latin and South America (Laclau 1977, Chevalier 1963, Bauer 1975); North America and Canada (Peterson 1991, Berthoff & Murrin 1973) and Africa (Arrighi 1973: 338, Amin 1976: 295–6).

In northern Australia, feudal principles were *both* a legal device to enable Crown ownership of land upon settlement, as the following section will examine, *as well as* a means of exploiting the predominant Aboriginal population and their land attachments. Feudal tenure's graded system of land allowed for a series of loyalties based on coexisting land rights among the Crown, pastoralists and Aborigines. The land interests of colonisers *and* Aborigines could be realised jointly in northern Australia because of the need for wide-scale Aboriginal labour from the mid-19th to mid-20th century. By contrast, the industrialising south-eastern Australian colonies during the same period deemed Aborigines largely superfluous to the labour market, and drew a response of forcible eviction from their land.

Australian manifestations of feudal land tenure

The first laws introduced to any colony are property laws because land conquest and ‘frontier possession’ go to the heart of colonisation. They signify a vital strategy for Aboriginal land dispossession. The feudal principle of ultimate Crown ownership of land, as applied to Australia, served British colonial objectives of control and expropriation. It produced a graded coexistence of land interests and was routinely implemented in other English, French and Spanish settlements, via a land lease system.¹ Rather than enforcing laws of individual freehold property, which would have given too much licence to ex-convicts, military personnel and speculators, feudal property statutes meant that land could be parcelled out to productive and loyal tenants while ownership and ultimate control would be retained by the Crown.

The *Australia Courts Act* 1828 was the statutory instrument for the implementation of feudal tenure, which stipulated that land possession had to be traced to Crown ownership. It was confirmed in case law by the 1847 New South Wales Supreme Court decision, *Attorney-General v Brown* (hereinafter *Brown*). These laws not only alienated Aborigines by nullifying their land interest, but also deterred casual squatters and speculators. Land ownership was precluded without reference to some past grant from the Crown. The effect was that the Crown retained resumption rights if lease requirements of infrastructure, stocking and high rents were not met.

The recent High Court judgments in *Mabo & Ors v The State of Queensland* 1992 (hereinafter *Mabo*) and *The Wik Peoples v The State of Queensland* 1996 (hereinafter *Wik*) confirmed the feudal origins of Australia’s land law, due to the ultimate, or ‘radical’, title of the Crown upon colonisation. Each substantive judgment of the High Court in *Mabo* made some reference to the feudal essence of land law as expressed in the doctrine of tenure. In his judgment, Brennan J maintained that the Australian tenurial principle that ‘all lands are holden mediately or immediately of the Crown, flows from the adoption of the feudal system merely’.

In the colonial setting, feudal laws enforce the Crown's intent of absolutist rule. Although the feudal principle is based on a fiction that all land possession originated from royal title, including when it was originally articulated in the Norman Conquest in 1066, its doctrinal role is compelling in justifying forced territorial take-overs. It was held in *Brown* that feudal fiction becomes factual with colonisation because all land *can* be traced to the Crown.

To sustain the feudal land logic in the courts, it was necessary to show there was no pre-existing title to Crown title. Therefore, the corresponding fiction of *terra nullius* (land without owners) was manufactured on the basis that Aborigines did not cultivate the land. This myth lasted in Australia until the *Mabo* decision that recognised Native Title, and its existence prior to colonisation. But despite that omission, the High Court affirmed the ongoing relevancy of feudal tenure to Australia's common law. Brennan J stated that the 'feudal skeleton' must be retained to uphold the Australian common law and leasehold. The *Wik* decision furthered this position by determining that the rights conferred on pastoral lessees prevailed in cases of inconsistency with Native Title rights.

The effects of feudal tenure were particularly tangible in northern Australia. There, feudal laws meant more than just colonial land occupation. The dominant class of pastoralists felt acutely the stringent lease conditions requiring land improvements. They expressed an ongoing awareness of their obligations to the Crown and uncertainty of their leasehold due to their mere possession, rather than ownership of land. Their unease featured in northern newspapers, government reports, pastoral logbooks and memoirs. Regarding his Adminga property in the Territory in the 1890s, Arthur Trealoar commented that he had to walk off his property because of his frustration in getting 'the promise from the Government of a renewal of the lease' (Trealoar 1858–1933: 1). A 'cattleman' told the *Courier Mail*, 'If the Government overlooks my claim to the property when pastoral leases are made available, that will mean years of hard labour and money wasted' (Bendall 1938).

Feudal property laws also affected pastoralists' productive conditions and treatment of their Indigenous workers. Measures of accountability to the Crown kept pastoralism in a state of backwardness that necessitated a large, cheap and dependent labour force. The 1937 Payne Report on northern leases called on the Federal government to liberalise leaseholds because 'Crown rights of resumption' precluded holdings from being 'adequately developed' (Anon 1937: 1).

Therefore, in northern Australia feudal laws went beyond their immediate colonising purpose of asserting Crown title, by creating a system of competing and coexisting dependencies and loyalties. The feudal spirit of the law encroached on personal and proprietary relations between the State and pastoral lessees, and lessees and Aboriginal stockworkers. As the later sections will reveal, the feudal land spectre colonised the relationship between pastoralists and Aborigines on cattle stations.

But despite the articulation of feudal principles in Australian property law, Australia has not yet witnessed the 'vigorous debate' that has appertained to feudal formations in colonies overseas (Schell 1986: 1). In Australia, legal scholars have only considered issues of feudal law *per se*, as opposed to the *practice* of feudal law, to use the Foucauldian distinction (Hunt & Wickham 1994: 52). Legal analyses have emphasised the dilution of feudal property when the land register system of 'Torrens Title' was introduced to cities in south-eastern Australia in the mid-19th century. It represented a substitution of feudal tenure for a model closer to free-hold tenure (Bhuta 1998: 29). Such a focus has shied away from a study of northern property developments.

The debate in the aftermath of the High Court's *Mabo* decision has witnessed some openings for a dialogue on the social expression of feudal laws in Australia. Recent criticisms of legal empiricism by postcolonial theorists indicate movement in this direction. They examine the discursive significance of feudal principles in Australia's legal identity, distinct from medieval articles (Buck 1994: 138, Stuckey 1994: 115). The symbolic value and 'suasive' force of the feudal 'theory of tenures' has created a 'grundnorm'² of collective legal memory to mediate

the present and future, Dorsett and Lee argue (Dorsett & Lee 2000: 38). By drawing on the subjective value of jurisprudence, postcolonialists treat colonial feudal law as a social agent rather than a neutral 'repository of age-old wisdom' (Dorsett & Lee 2000: 39). Feudal agency was visible in the pastoral north due to the mutual dependence of land interests between pastoralists and Aborigines. The following section will consider how pastoralists enforced feudal laws to dispossess Aborigines' land and set up their authority as masters of Aboriginal labour.

Practice of laws to settle: pastoralists' private jurisdiction of public power

The British Crown, which encroached on lease arrangements, was relatively lenient when it came to local colonisers' dealings with Aborigines. Despite its ultimate feudal title over land, the Crown ascribed substantial autonomy to colonisers' implementation of feudal laws for conquest and dispossession. That allowed colonisers to establish their dominion over Aborigines. In northern Australia this jurisdiction was not only key to the settlement of land and pacification of Aborigines, but also important for pastoral settlers to assert their authority over a potential labour force, which will be examined later.

The dual sites of Crown supremacy and private power of landholders were compatible rather than paradoxical. Feudal proprietary analysis of the graded land system infuses method and meaning into the co-existing centripetal and centrifugal power bases of the State and individual land occupier. Perry Anderson has described this as the 'complex unity' of centralised and decentralised feudal power between the State and lords (1978: 153). Susan Reynolds found, 'The hierarchy of government coincides with the layers of control over the exploitation of land' (1994: 53). The disparate powers of the State and feudal landholder are held together by a common land interest against those they deem 'landless'. In northern Australia their concomitant goal was to dispossess Aboriginal 'others'. Pastoralists' 'negative' form of power against the State was the source of 'positive' power over Aborigines.

Pastoralists were therefore furnished with legitimate rights of public authority. Local autonomy in the enforcement of feudal laws became a form of extending colonial control. In 1866 the Queensland Premier, Robert Herbert, criticised the ineffectual court system and encouraged settlers to execute 'prompt punishment of crime' (Knox 1977: 236). In 1890 the South Australian Minister responsible for the Northern Territory,³ J L Parsons, argued, 'leave the native question alone and the natives will be obliterated' (Donovan 1981: 184). As Foucault put it, the practice by 'governmentalities' of complex and multiform 'techniques and tactics of domination' were the legitimate means of discipline (Foucault 1980: 102). On the northern frontier pastoralists, alongside local police, including the native police forces, formed a chain of 'governmentalities' to drive European settlement and quell Aboriginal resistance.

Consequently, with the insurgence of pastoralists on the northern frontier in the late 19th century came the establishment of private landed jurisdictions. Criminal justice was dispensed locally. Pastoralists employed their own punitive forces where official services were unavailable, thereby mediating State sovereignty. The *Queenslander* newspaper reported in 1861 that the native police commandant Captain Walker had been recruited and paid by local squatters in the Dawson area to run a private squad of troopers for their benefit (Cryle 1989: 68).

Northern pastoralist Gordon Buchanan proclaimed that in the 1880s, 'Every man was his own policeman; and the letter of the law was often ignored in favour of summary justice. ... if no punishment were inflicted it would have been impossible to settle [the] country' (1933: 117). Frontier myths and reports of cattle killings by Aborigines would justify any degree of retaliation. Crimes against cattle received the highest incidence of police punishment in the Territory, followed by robbery and assault. From his travels in the late 1880s, Dudley Kelsey wrote of the Territory's 'destructive and murderous blacks' who resorted to spearing cattle to obtain meat (1938: 400). 'The cattle became so scared through being hunted by the natives that it made the mustering of the stock very hard for the stockman. The smell of a blackfellow would cause the cattle to stampede for miles' (Kelsey 1938: 409).

Police showed their willingness to acquiesce to the needs of pastoralists in their punitive activities. A Gordon Creek policeman in the Victoria River District in 1894 wrote about his inability to catch alleged Aboriginal cattle killers, 'Another Tracker & another Carbine would be conducive both to my interest & the Station owners' (Rose 1991: 82). The slightest suspicion was sufficient to inflict corporeal punishment on Aborigines. In *R v Burges* (1872) the Supreme Court of Western Australia held that shooting was justifiable to protect cattle and property. The extensive discretionary powers of police meant that there were no caps on the degree of punishment. The 1905 Report of the Queensland Chief Protector of Aborigines, Dr Walter Roth, reported allegations that the police acted with 'medieval cruelty' (Anon 1903). Contemporary northern Queenslander, Robert Gray, commented that such 'iniquities' by the native police from the 1860s were necessary for land occupation and to protect 'a small and scattered' European population with their 'flocks and herds' (1913: 79). An officer with the Queensland native police wrote, 'Some episodes connected with the doings of the force cannot be published ... the "boys" got beyond control in certain circumstances' (Kennedy 1902: 35).

Direct action against Aborigines was often perpetrated against the 'target body', rather than through formal arrests or court processes. Violence on the northern frontier cultivated an atmosphere of fear and terror among Aborigines. The culture of violent excesses and the use of local action rather than the judiciary reinforced European superiority on the Aboriginal imagination. It not only served to conquer land, but also to pacify Aborigines to pastoral and police authorities. It set up the pastoral lease as the site of authority that continued after the initial occupation of land, and was imposed on Aboriginal workers.

Setting up the pastoral jurisdiction over labour

Decentralised colonial tactics were essential prerequisites for the making of a colonial Indigenous labour force. After settlement the feudal 'fortification' of the pastoral lease was consolidated as the locality of power to exploit Aboriginal labour. Cattle kings treated their leaseholds

as their castles, even if they were made out of grass (Durack 1962). The harsh feudal leasehold conditions compelled pastoralists to maximise their utility from land and labour.

The arbitrary powers that pastoralists exercised brutally on the frontier had consequences for Aborigines in station life. An early stockworker at Meda Station in the Kimberley, Jimmy Bird, claimed that despite infrequent killings the threat of violence was apparent: 'I was working for some rough men, whitefellas who would pull their gun out and kill any Aborigines who stood up to them' (1988: 98). Even when violence was not exercised, the pastoralists' authority was established because of Aborigines' ongoing fear of Europeans and pastoralists' emerging paternal role over their Aboriginal worker tenants. A 'complex dynamic between violence and protection formed the basis for paternalism, which was an enduring characteristic of station culture and life with a white Boss,' according to Mary Anne Jebb's research on Kimberley stations (Jebb 2002: 26).

Protective legislation was implemented by 'Weberian' style northern administrations in the early 20th century to appease frontier violence and foster a productive labour supply. Similar legislation was instigated across the north: the *Aboriginal Protection Act and Restriction of the Sale of Opium Act* 1897 (Qld), the *Aborigines Act* 1905 (WA), and the *Aboriginals Act* 1910 (NT).⁴ But despite flaunting the imprimatur of bureaucratic modernity, these statutes had little bearing on the personal administration of northern cattle stations. Pastoralists' private powers over Aboriginal lives persisted well into the 20th century.

A key feature of the statutes was the introduction of employment permits that were required for station managers employing Aboriginal labour. Their conditions were not stipulated in regulations pertaining to the Acts, and tended to be determined by the station manager. Their enactment was a far cry from the regulated Award system that embodied European workers' rights in the north. It meant that the restrictive aspects of the legislation on Aboriginal lives, including restrictions on the movement of station labour, place of residence, family life and expenditure of finances, were at the behest of the 'Boss' or 'Missus' (Huggins 1995: 188, Austin 1988: 92).

The effect of the legislation, therefore, was to delegate to station managers welfare responsibilities over their tenant Aboriginal workers. Entrusting them with substantial legal powers was one way pastoralists maintained official control over their workers. Permits for employment were granted to any European of 'good repute', and it was common knowledge that permits were not strictly supervised (Askins 1965: 58, 80). With local police, some pastoralists even served as protectors. However, there was generally a scarcity of official protectors and therefore limited monitoring of stations.

The consequences of the protective legislation for labour conditions were that pastoralists maintained unbridled powers, while Aboriginal workers were denied access to any bargaining process, freedom of movement or the right to refuse to work (Hess 1994: 67). The 1905 Report of the Chief Protector for North Queensland, Dr Roth, found the protective legislation did not operate to the detriment of the 'bona fide' employer of Aboriginal labour (Roth 1905). The Western Australian Minister responsible for Aboriginal Affairs between 1914–19, Rufus H Underwood, put it more crudely when commenting that appointing pastoralists as protectors was akin to 'leaving a hawk to protect a chicken' (Haebich 1992: 149).

The tenancy arrangement on cattle stations gave rise to a feudal polity where the pastoral leases represented the private jurisdiction of the station manager. By practising direct paternalistic control over their Aboriginal workers, pastoralists exuded the status and powers akin to feudal lords over their land and labour. Hierarchical proprietary power was spread to parliamentary realms, culminating in strong conservative pastoral forces in colonial assemblies. They resembled 'aristocratic squatters' who exercised political sway over the microcosm of their lease and the macrocosm of colonial legislature (Saunders 1982: 41–2).

Pastoralists conceived themselves as 'natural rulers', due to their respectability, affluence and civilisation (Collier 1911: 316). Northern Queensland pastoralist, Oscar de Satge, wrote that the successful manager of a large station might aspire to fill any position from the dispenser of justice 'from his own bench of magistrates' to that of Premier

(de Satge 1901: 98). This was also the view of colonial commentator James Collier who observed the endurance of pastoral administration in Queensland long after its extinction in New South Wales: ‘It was impossible that men possessing such forcefulness of character as the early landholders, so well educated most of them, and sometimes of such commanding talents as one at least of them exhibited, should not actively intervene in the government of the colonies’ (Collier 1911: 308).

The feudal form of power saw private authorities over land directly present in public governance. The public power-holder was identical with those possessing authority ‘in his own right’ (Weber 1967a: 239, 1967b: 99). But although the pastoralist exhibited feudal qualities in parliaments, the real exercise of power was on the pastoral lease. The significance of a feudal analysis of power is understanding the location of power — the landed estate — rather than the degree of force perpetrated on Aborigines. By conceiving the role of land in power relations, it is possible to understand the restrictions on Aborigines after frontier violence dissipated and pastoralists had established their lordly authority. The following section will analyse the development of a mutual understanding within the restrictive confines of the lease.

Normalised cattle station labour dependencies

The ‘normalisation’ (Foucault 1978: 144) of pastoralists’ power by the late 19th century was a result of reduced frontier conflict and unprecedented dependence on Aboriginal labour. The political jurisdiction of the pastoral lease continued, but in Michel Foucault and Norbert Elias’ terms, was transformed from vengeful discipline on the target body into regulated, self-disciplined authority (Foucault 1979: 82), and the ‘internalization’ of moral constraints (Elias 1978: xiv–xv). In northern Australia, feudal relations highlight the range of tactics of control directed at *both* the Aboriginal body and soul. The tenancy of Aboriginal workers on stations allowed direct control because they lived and worked in the vicinity of the pastoralist, but as the 19th century progressed it was more likely to be ‘finely tuned’ than forceful.

Violence was often not required because Aborigines had little choice other than station life, which enforced a dependency on Europeans for access to land and material goods (Gribble 1884: 21–2, Harney 1943: 5–6). Jeannie Gunn author of *We of the Never-Never* (1908), noted, ‘The white man has taken the country from the black fellow, and with it his right to travel where he will for pleasure and food’ (Gunn 1990: 185). The denial of Aboriginal rights to traverse their land meant they were afforded few options outside of station life. Aborigines’ complicity did not mean that Aboriginal resistance or European force was eradicated (Kennedy 1985). But by the 20th century violence was more intermittent and the focus shifted to techniques of power concerning the ‘social body’.

There was decreasing utility for pastoralists to extinguish a realisable labour source. They could not afford to treat their labour as expendable. C L A Abbott, Northern Territory Administrator from 1937 to 1946, claimed the abilities of stockmen were of such a ‘high order’ that ‘[t]he pastoral lessees admit that they are dependent upon the native to handle their stock’ (Abbott 1950: 147). Federal Minister Paul Hasluck, concluded, ‘[t]he cattle and sheep stations could not have operated without them [Aboriginal workers] in the conditions prevailing in the 1930s’ (1988: 52). He details the benefits of this situation:

Even if it were estimated that the work they did could be done by a quarter of that number of whites, the facts were that, in the conditions prevailing at that time, white labour, male or female, would not have been obtainable; moreover black labour was peculiarly suited to the way the pastoral industry was run at that time. The severity of the ‘wet’ and the lack of any made roads meant that movement was almost impossible during part of the year and this fact and the open-range system meant that stockmen were not wanted all year round. It suited both black and white that during part of the year the blacks, still tribal, ‘went walkabout’ (1988: 53–4).

Pastoralists’ dependence on Aborigines shifted the colonial relation to a form of feudal mutual dependence where Aborigines were assured access to land upon imparting obligations of loyalty and labour services. It mimicked the feudal relationship between Crown and colonist. Mary and Elizabeth Durack articulated these rights and obligations: ‘We give

them what they want because we need them to work for us — just a matter of convenience from both points of view’ (Durack & Durack 1935: 25). Tim Rowse’s study of Central Australian pastoral properties points out that ‘normalisation’ of the colonial relationship was a product of providing food and clothing rations, which replaced violence as a mode of government from the 1890s to the 1960s. ‘Rationing brought donors and receivers into close and even habitual contact without requiring their mutual understanding’ (Rowse 1998: 5).

It was in the pastoralists’ interests to foster Aboriginal family and community life on the cattle stations. To secure their workforce, pastoralists allowed Aborigines to practise customary and ceremonial rites that maintained ties with their land. They were entitled at times to hunt and gather, which supplemented station food supplies. Aboriginal connections with the land, therefore, were advanced rather than suppressed. This contrasted with conditions for Aborigines incarcerated in government and mission settlements which were often far removed from Aboriginal home territories (Merlan 1978: 74).

Arguably the central means of maintaining Aboriginal workers was the provision of dwellings on pastoral leases. Communal Aboriginal tenancy in the ‘workplace’ was a modernised form of vassalage that produced a dependent and stable Aboriginal labour force. It precluded a ‘free’ and mobile labour force that would have siphoned the station owners’ surplus through the payment of wages. Accommodation, clothing and minimal subsistence were provided not only to Aboriginal workers, but also to their family dependants, making it difficult for Aborigines to leave on a permanent basis. They also received tobacco, blankets and simple tools. Station ‘runaways’ would be forced to return to stations to seek food and companionship. Peter Clancy, an Aboriginal stock worker at Luluigui Station in the Kimberley, refers to a situation where his father, a station escapee, was not punished by the police but told ‘that if you want tucker you can come back to the station with your family and work for it’ (Clancy 1988: 196).

A feudal analysis highlights the role of land in restricting labour force mobility by non-forceful means. In their examination of Indian

colonial feudalism, Sharma and Yadava point to feudal bonds manifesting in the form of enticements for workers to stay on location as the means of ensuring surplus appropriation (Mukhia 1981: 285–6). Homage and benefice distinguishes feudal appropriation from the coercion of slavery and the ‘freedom’ of wage workers in capitalism. Feudal workers were neither completely separated from the means of production, nor independent economic beings that could compete in the labour market. They lacked the implements, land and protection away from the secure environment of the manor (North & Thomas 1973: 19–20). The protective station environment could be contrasted with the vulnerability of Aborigines to colonial authorities.

Because of pastoralists’ lordly jurisdiction over their Aboriginal workers, they could command their loyalty without granting wages. The absence of an Aboriginal wage-labour market in northern Australia persisted well into the 20th century (Stevens 1968: 16–7). This was supported by government legislation. The *Aboriginals Act* (NT) omitted compulsory payment of wages to Aboriginal stockworkers after extensive debate in parliament. The rationale of the Territory’s Chief Protector of Aborigines in 1912, Baldwin Spencer, was that ‘wild’ Aborigines working in outlying districts, and outside of the capitalist economy, would not be sufficiently civilised to understand the use and value of money (Spencer 1912: 9). Where wages were paid to Aboriginal stockworkers, such as in Queensland under 1901 amendments to the *Aboriginal Protection Act*, they were to be ‘expended’ by a Protector or police officer or invested into a worker trust fund.

The non-payment of wages is a pervasive and emotive theme in Aboriginal recollections of station life. The resentment workers express is coupled with an admission that they were unaware of its absence at the time. Eric Lawford from Christmas Creek Station claims the stockmen ‘wouldn’t have known what money looked like’. ‘Now in those days, to our experience, there was no such thing as money. We didn’t see any money at all in the old days’ (Lawford 1988: 20). While expressing pride in his work, Big Mick Kankinang qualifies, ‘But we bin working for bread and beef. We never got money then. We bin working for

blanket, boot, hat, shirt and trousers, that's all. That's all we bin working for, early days' (Kankinang 1991: 107–8). Hobbles Danyarri maintained, 'When they on the job, that's right, you can have them on the job. But don't pay them. Let them work for free. And don't give them good tucker, don't give them good beef. They can work free, while we run the station' (Rose 1991: 139–40). Barney Barnes' grievance is unmistakable, 'None of us got paid in money, we only got clothes and food. We were just like prisoners. ... we were working like slaves' (Barnes 1988: 272). Jack Jangari comments that Aboriginal stock workers 'made Wave Hill rich. They made every station ... rich. And [they] keep us fellows poor' (Rose 1991: 156).

Aboriginal transgression: station life and close relations with Europeans

The private jurisdiction of the pastoral lease allowed Aboriginal tenants a determinate site to negotiate power with the pastoralist. The feudal 'complex unity' of power was realised not only for the pastoralist in mediating State power, but also for the Aboriginal worker in navigating pastoralists' authority. The pastoralists' 'panopticon' over its lease gave Aborigines recognisable boundaries of power. It also meant that personal relations could develop between Aborigines and station authorities, which could be used by Aborigines to shape and manipulate the dominant power codes. As well, Aborigines on cattle stations maintained ties to their land and communities that countered the symbolic universe of the station manager and served as a source of empowerment.

Notwithstanding the role of Aboriginal workers in pursuing their land interests on cattle stations, it was also to the pastoralists' advantage to accommodate these interests. For example, Aborigines' rights to 'walkabout' in the wet season was a concession by management that meant that the station did not have to support workers in the non-mustering 'slack season' (Chapman 1992: 226). But managers and Aborigines nonetheless perceived it as important for retaining traditions (Lawford 1988: 3). Conversely, managers would punish Aboriginal disobedience by prohibiting their departure. Lochy Green's recollection of

the Partukurru, or initiation time, at Myroodah Station is indicative of the Aboriginal experience. He described the pastoralists' complicity in the traditional Aboriginal law business, which is indicated by their provision of rations:

That law business used to be held during the wet season, which was a holiday time on the stations. The managers used to let the Aboriginal people alone during that time, as long as they came back to the station when it was time to start work again. ... The law men used to call people from all the other stations to come down for a big meeting — took rations with them (Green 1988: 191).

Aboriginal remembrances are also characterised by a fondness for station life, closeness with European managers and pride of their work contribution (Edwards 1992: 190). Aborigines in the south-eastern colonies were generally deprived of these kinds of experiences. Aboriginal 'bush skills' were not essential in the incipient industrial economy and could call on the much larger settler populations for labour (Rosser 1985: 1). Policies of segregation rather than utilisation defined attitudes to the Indigenous population. The occupier tenant feudal relationship in the north allowed for personal, and even intimate relations with European station managers. Ronnie Martin describes his boss on Mainoru Station warmly: '[he] knew Rembaranga people well, understood our lingo, and Jinba tribe too. Old Mackay used to talk the lingo' (1979: 32). In the early 20th century on Inverway Station the stockworker Sandy McDonald recalls, 'We found everything going well in those days. My father had no trouble with the Aboriginal people working for him. All of them in the camp followed the Aboriginal rules and customs and went on well, no fighting, no row' (1992: 303). With hindsight, July Oakes, who worked on Texas Station at Ord River and on the Duracks' Argyle Station, said, 'Where Aboriginal people used to work on the stations they were contented. But ever since then things have changed altogether. They were happy' (1992: 296).

There was a sense among some Aborigines that the lack of wages was justified because of the tenancy conditions:

All our life was in the stock camp, even the native boys. We were all in the white stock camp you see on the stations. We were brought up on the stations. When we finished stock camp work we'd go on in the yard building fences in our spare time. They kept you on all the time those station managers. Of course they weren't paying much but that's how they kept you on (Chapman 1992: 225).

On the other side of the equation, Europeans expressed paternalist sentiments towards their Aboriginal station workers. Jeannie Gunn warmly portrays the unpredictable behaviour of Aboriginal domestic servants, especially Bett Bett (Dolly Bonson), the 'rescued orphan' (Gunn 1962: 5). She wrote, '[T]he blacks *are* wonderful. To have any idea of how wonderful they are, you must live among them' (1962: 62). Mary Durack depicted loyal relations between Europeans and Aborigines on cattle stations (2000: 82). Her father, Michael Durack, was more blunt: 'The blacks have been at the station for a long, long time. We are, in a negative way, attached to them and they to us' (Hasluck 1988: 59). In a moralistic tone, Hasluck analogises Kimberley stations in the 1930s with 'feudalism' due to the 'stability and contentment' and 'mutual understanding' between Aborigines and pastoral employers. He compares them with 'serfs' and 'overlords', and draws a contrast with the earlier days of 'slavery' in the 1880s when station control involved police brutality (Hasluck 1988: 54).

By the 1930s, many Aborigines had been born and raised on cattle stations and had limited exposure to traditional Aboriginal practices and lifestyles. Station managers were afforded considerable control over Aboriginal lives on a daily basis. Stockworker Oakes commented, 'Well most of the people grew up on stations and they didn't know anything, never went to school. That was all they knew, you know, the work on stations, and they grew up to be stockmen' (1992: 296). Mary Durack recognised the opportunities for pastoralists to assimilate Aborigines into station life by searing European ways into their consciousness: '[A]s long as he played the white man's game he would be assured of adequate tucker' (2000: 49). At times visiting missionaries sought to shape morality on stations, but the fundamental forms of acculturation were through living together.

Close relations did provide some empowerment for the Aboriginal station worker. The proprietary *and* personal ties offered them choices unknown in other Aboriginal settlements. Aborigines saw their stockwork as essential to the economic viabilities of the station and they developed pride in their expertise. Their work was a source of pride. Oral testimonies of Aboriginal stockworkers highlight the skilfulness of their labour. Aboriginal stockworker, Sig Oden, claimed to be a 'Vestey Man' was similar to being a 'Kidman Man', for there was some kudos in the association: neither Vesteys nor the Kidman pastoral companies employed inefficient staff, or if they were, they certainly didn't last' (Sing & Ogden 1992: 68). McDonald conveyed the degree of authority acquired through work: 'They relied on Aborigines to do the work. A lot of those stations now today were built up by Aboriginal people. ... Everything was trusted to the Aborigines' (1992: 304).

Labour relations in remote pastoral northern districts meant both colonists and Aborigines transcended the boundaries that otherwise defined Indigene-colonial relations in Australia. The mutual dependency and physical proximity, ensuing from the relationship of vassalage, meant Aborigines could influence their conditions.

Feudal response to free/forced debate and moving forward

Emphasis on the mutual proprietary interests in northern labour exploitation exposes the inadequacy of historiographic reliance on moral concepts of power. Narrowing of the discussion to 'free' versus 'unfree' labour fails to recognise land as a jurisdiction of power. Only by understanding the feudal formations underpinning colonial labour dependencies can one address the dynamic mechanisms of control, and move forward in redressing feudal property law that continues to haunt Australian common law.

The 'unfree' school, led by Raymond Evans in the 1970s, viewed the brutality on the early cattle stations as a form of total control akin to slavery. He draws attention to 'striking parallels across time and space between the condition of the slave and the unfree Aboriginal worker'

(1984: 203). This paradigm of Aboriginal coercion and exploitation by cattle station owners stresses the denial of European economic rights. It has its roots in earlier paradigmatic explanations of Aboriginal labour, such as 'internal colonialism', which position the exploitation of Aborigines in a world capitalist schema (Hartwig 1978, Beckett 1977).

By contrast, from the late 1980s new cultural historians, such as Ann McGrath and Henry Reynolds emphasise the Aborigines' 'creative adaptation' to stations that afforded them agency (H Reynolds 1981: 135, McGrath 1987: 144, May 1994). They highlight the cultural benefits imparted to Aborigines such as land, maintaining kinship ties and developing skills of stockwork. To counterpoise theories of 'internal colonialism', McGrath states, 'Generations of Aboriginal station dwellers co-operated with the white people, but they were never truly colonised' (1987: 175). McGrath further puts the cultural revisionist position:

White historians have tended to assume that Aboriginal culture was destroyed by all forms of white contact and thus acceptance of the cattle station lifestyle was a product of their humiliation, a cultural 'sell-out' to the white man, where they became near-slaves under a totally mean and oppressive system. Rather, Aborigines used the cattle station for their own purposes; they managed to secure European goods, as well as maintain links with their land and follow the precepts of Aboriginal law (1987: 145).

Tim Rowse adds to the debate by pointing to the Durack family's subjective paternalism on their Kimberley stations. While he essentially complies with the new cultural historicism that suggests relations of trust, loyalty and stability existed with Aboriginal workers, Rowse contrasts this with the treatment of Aborigines on the 'outside' of station life. He injects complexity into McGrath's portrayal of benevolent masters, by pointing to their adversity to 'wild Aborigines' in a 'landscape of terror' (Rowse 1987: 82). McGrath on the other hand conceives the Duracks' rule as characterised by welfare, protection from the police and court system, and rations for Aboriginal workers and their dependants (McGrath 1987: 100, 128). Rowse has critically responded to the way McGrath romanticises the oral accounts by Aboriginal survivors of a nostalgic past (Rowse 1988: 57).

The moralistic undertones of this debate based on whether Aborigines were happy or sad, conveyed their memories nostalgically or bitterly, blurs an examination of the source of power — land — which empowered both Aborigines and pastoralists.

The northern labour dependencies were neither free *nor* forced. Conceptions of Aborigines as slaves understate the maintenance of Aboriginal moral communities on cattle stations. Aboriginal workers were a far cry from the ‘nationally alienated’ north American plantation slaves. That feature formed the basis for the classic definition of slavery developed by Orlando Patterson (1982), and from which Evans drew comparison. In fact, relative to other parts of colonial Australia, the northern labour relation strengthened rather than weakened Aboriginal natal ties to land. The cardinal maxim of slavery that ‘neighbours make difficult slaves’ implies that recruitment from remote regions maximises control and that slavery of natives in a conquered land is ‘almost impossible to achieve’ (Newton-King 1999: 124). Aboriginal ancestral claims and cultural heritage provided alternative ritual processes and symbolic authority that precluded pastoralists’ total ‘ownership’ of Aborigines, a prerequisite of slavery (Bales 1999: 5–6). Both Aborigines and pastoralists defined the ‘symbolic universe’ which, by contrast, would be foreign to slaves uprooted from their territory. Via a feudal arrangement of rights and obligations, Aboriginal natal ties to the land were used to maintain station loyalty.

At the same time, notions of ‘free’ Aboriginal labour fail to recognise the restrictions on choice, which is available in a free labour market. Commitment to station work was often the only means of Aborigines retaining sacred ties to land and access to material goods. The relation of dependence ensured the master cheap and secure labour. Mary Durack commented, ‘although he [the Aboriginal worker] was technically free to return to his people in the bush, this entailed risk and deprivations that he was not prepared to accept’ (2000: 49). The ahistorical approach of cultural historians, which focuses exclusively on the period of station consolidation in the 1930s, overlooks the earlier establishment of the pastoralists’ private jurisdiction in colonial settlement. Violence was utilised then to instil European authority in the consciousness of

Aborigines. The 'free labour' ilk marginalises discourses of exploitation by emphasising the opportunities afforded to Aborigines. Cultural histories have downplayed the limited rights Aborigines had in law, particularly to land, an understanding of which requires recognition of the nature and purposes of colonial feudal laws. Aboriginal leverage to use and occupy their land was circumscribed by the pastoralist in the final instance.

Arguably, limitations on Aboriginal agency in northern labour relations were only realised with the mass retrenchments of Aborigines from the cattle industry in the 1970s. The 1966 Equal Wage decision, in the era of mechanisation of the industry, pastoralists from using Aboriginal labour on previous scales. New economic circumstances exposed the of Aboriginal labour to pastoralists. At the same time, Aborigines maintained an emotive attachment to the stations and expressed a nostalgia for station life, particularly those who later encountered social problems in the towns (Shandley 1988: 38). With limited resources or assistance from the 'outside world', persistent Aboriginal dependence on cattle stations is revealed in their formation of 'outstations' on the outskirts of pastoral leases. Peter Yu described the Aboriginal expulsion from stations as breaking 'the back of the feudal relationship between station managers and Aboriginal families ... precipitat[ing] a refugee crisis of enormous proportions' (1994: 19).

A focus on the feudal nature of the pastoral lease explains the dynamic nature of landed power. It overcomes the historiographical impasse that addresses either the early period of open conflict and forced recruitment, *or* the later paternal period when Aborigines were born on stations. The question should not be, as historians have maintained, whether labour was free or forced, but how the pastoral lease, rather than the State, operated as the locus of colonial power. By understanding the authority of feudal landed domains, it is apparent that power can be equally compelling whether based on violence or loyalties.

Furthermore, recognition of the coexisting land settlement between Aborigines and pastoralists on cattle stations, aside from its free or forced traits, provides possibilities for furthering the legal discourse on

Native Title. Jurist Frances Flanagan argues that Western Australian protocols governing Native Title, which effectively exclude Aborigines, fail to identify the ability of Europeans and Aborigines to cohabit on pastoral leases as they did during the cattle station era (2002). Viewing northern Australian cattle industry experiences through a feudal lens provides, paradoxically, an understanding of possibilities for departing from perpetuating feudal property laws in Australia.

Concluding remarks

A feudal property analysis of northern pastoral–Aboriginal relations allows us to move away from a free versus forced analysis of Aboriginal labour. To argue that northern Aboriginal stockworkers were drawn into a postcolonial feudal relation is not to denigrate Aborigines, but identify the value of land in labour exploitation in the circumstances. The mutual dependence revealed that the form of labour exploitation allowed Aborigines to circumvent otherwise more oppressive colonial relations. Their subordination was a product of feudal proprietary in which there were ‘coexisting’ or ‘dialectical’ interests in land. Feudal law defined colonial conquest in Australia, and indeed actively maintained its symbolic significance well beyond its expiry date. But it found a life of its own when pastoralists treated their lease as their jurisdiction and Aboriginal workers asserted their ‘natal’ ties to land.

The European impetus to monopolise Aboriginal land and labour has to be understood *alongside* the Aboriginal impetus to retain their land and moral community. Often these motivations conflicted. But in north Australia a workable relation pertained because of the competing interests and not despite them. Labour exploitation was the crossroads where feudal laws became visible for Aborigines, rather than operated to their exclusion.

Notes

- 1 For a detailed analysis of non-Australian arrangements of colonial feudal land tenure, see Sen 1962, Guha 1982.
- 2 The hierarchical system of rules that have an ultimate source.
- 3 The Northern Territory was governed from South Australia between 1882 and 1910.
- 4 It was followed by the *Aboriginal Ordinance* of 1911 when the Commonwealth took over administration of the Territory.

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